(1) (3)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Cr. Appeal No. 438 /2004

APPELLANT

IN JAIL

Lakhan Basor, S/o. Lolo Basor, aged about 36 years, Occupation Agriculture R/o. Village Salka, P.S. Baikunthpur, Distt. Koriya (C.G.).

(186/04)

d on 07.05.04

Shri Aditya Joshi Advocate

R. to D.R. (J)

VERSUS

NON-APPLICANT : State of Chhattisgarh, Through P.S. Baikunthpur, District Koriya (C.G.).

CRIMINAL APPEAL UNDER SECTION 374 (2) OF Cr.P.C. 1973

F.R. (21)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Cr. Appeal No.438/2004

Lakhan Basor

Vs.

State of Chhattisgarh

Post for Orders : 13 .07.2006

Sd/-
Dilip Raosaheb Deshmukh
Judge

A.F.R. (22)

HIGH COURT OF CHHATTISGARH AT BILASPUR

Before: Hon'ble Shri Justice Dilip Raosaheb Deshmukh

Criminal Appeal No.438/2004

Lakhan Basor
Vs.

State of Chhattisgarh

Shri A.K.Shukla, Counsel for the appellant.
Shri Arun Sao, Government Advocate for the State.

J U D G M E N T

(Delivered on this 13th day of July 2006)

This appeal is directed against the judgment dated 19-04-2004 delivered by Shri A.K.Pathak, Learned Additional Sessions Judge, Baikunthpur, Korea in Sessions Trial No.09/2004 whereby the appellant was convicted under Section-304 Part-I of the IPC and was sentenced to rigorous imprisonment for 6 years and fine of Rs.2,000/- and in default of payment of fine to undergo additional rigorous imprisonment for 4 months.

2. It is not disputed that the deceased Baijanti Bai was the wife of the appellant. It is also not disputed by learned counsel for the appellant during the course of arguments that death of Baijanti Bai on 09-11-2003 was homicidal in nature. The appellant also admitted in his examination under Section-313 of Cr.P.C. that he was examined on 10-11-2003 by Dr. Ashish Karan PW-6 who had found a lacerated wound on the back of head size 1x1/2"x muscle deep which was caused within 24 hours prior to examination.

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3. Briefly stated the prosecution case is that on 09-11-2003 the appellant had a quarrel with his wife Baijanti Bai inside the house during which Baijanti Bai assaulted the appellant Lakhan Basor with a brick on the head. Infuriated by this, the appellant also assaulted Baijanti Bai with a brick on the back portion of her head as also on her stomach. Baijanti Bai died on the spot. Supervisor PW-5 and Banwari PW-11 along with Run Sai PW-1 father of the deceased reached the spot and saw Baijanti Bai lying dead. The appellant made an extra judicial confession before these witnesses of having caused the death of Baijanti Bai by assaulting her by a brick. Merg intimation Ex.P-1 & F.I.R. Ex.P-2 was lodged by Run Sai PW-1 at Police Station-Baikunthpur on 10-11-2003. Dr. Ashish Karan PW-6 conducted the autopsy on the dead body of Baijanti Bai on the same day at 4 P.M. and found one abrasion of 1"x1/2" at the posterior half of vertex left side. On dissection, haemotoma was found at the posterior half of the vertex left side measuring 2 1/2" x 2" and another haemotoma was present above and beneath the membrane. Spleen was ruptured. Wound was 4"x6" in size. Peritoneal cavity was filled with blood. It was opined that death of Baijanti Bai was due to hemorrhagic shock due to rupture of spleen and coma due to head injury.

4. During investigation, on the memorandum of the appellant, one brick was seized from under the Sarai Tree vide Ex.P-7 which had blood like stains. Blood stained soil and plain soil were seized from the spot vide Ex.P-8. Blood stained clothes of the deceased, blood stained soil and plain soil and the brick having blood like stains were sent to the Forensic Science Laboratory, Raipur on 13-12-2003 for chemical examination. However, the report of the Forensic Science Laboratory was not filed by the prosecution before the trial Court. After

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completion of investigation, the appellant was prosecuted for an offence under Section-302 of I.P.C. for which a charge was framed against the appellant who abjured the guilt, pleaded innocence and led no evidence in his defence. The prosecution examined 12 witnesses. Relying upon the testimony of Banwari PW-11 relating to extra judicial confession made by the appellant and the fact of presence of the appellant inside the house with an injury on his head, the learned trial Judge convicted the appellant under Section-304 part-I of the IPC and sentenced him as aforesaid in para-1. (Supra)

5. Shri A.K. Shukla, learned counsel for the appellant while not disputing that death of Baijanti Bai inside her house on 09-11-2003 was homicidal contended that the prosecution has failed to establish that the appellant was the author of the crime. It was argued that extra judicial confession by the appellant having been made in the presence of the Police was inadmissible in evidence and could not form the basis for convicting the appellant. No other point was urged by the learned counsel for the appellant. On the other hand, Shri Arun Sao, learned Government Advocate for the State argued in support of the impugned judgment.

6. Having heard rival contentions, I have perused the record of Sessions Trial No.09/2004. Conviction of the appellant rests on the testimony of Banwari PW-11 relating to extra judicial confession made by the appellant and the presence of the appellant inside his house with an injury on the head. It is well settled by a catena of decisions of the Apex Court that extra judicial confession, if voluntarily, being not obtained by coercion, inducement or promise of favour can form the sole basis of conviction and corroboration would be required only

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by way of abundant caution. In ***Gura Singh Vs. State of Rajsthan*** reported in **[2001] 2 Supreme Court Cases 205**, it was held by the Apex Court as follows:

> " Extra judicial confession, if true and voluntary, it can be relied upon by the Court to convict the accused for the commission of the crime alleged. Despite inherent weakness of extrajudicial confession as an item of evidence, it cannot be ignored when shown that such confession was made before a person who has no reason to state falsely and to whom it is made in the circumstances which tend to support the statement. That the evidence in the form of extrajudicial confession made by the accused to witnesses cannot be always termed to be tainted evidence. Corroboration of such evidence is required only by way of abundant caution. If the Court believes the witness before whom the confession is made and is satisfied that the confession was true and voluntarily made, then the conviction can be founded on such evidence alone. It is not open to the Court trying the criminal case to start with a presumption that extrajudicial confession is always a weak type of evidence. It would depend on the nature of the circumstances, the time when the confession is made and the credibility of the witnesses who speak for such a confession. "

7. Scanning the testimony of Banwari PW-11 on the above touchstone, it is found that Banwari has clearly stated that immediately on learning from Munna that the appellant had committed murder of Baijanti Bai, he had gone to the house of the appellant with Run Sai PW-1, Kamli PW-4, Gopal PW-2 and Supervisor PW-5 where the appellant had confessed that he had caused the death of Baijanti Bai by assaulting her with a brick since she also assaulted him with a brick. This testimony is wholly unrebutted in cross examination since no question in this regard was asked to this witness by the defence. The above testimony clearly shows that the extra judicial confession

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was made by the appellant in his house. These witnesses along with other villagers had gone there immediately on learning about the occurrence on 09-11-2003 itself. Supervisor PW-5 has also testified that on being informed by Run Sai PW-1 he had gone to the house of the appellant and had seen that Baijanti Bai was lying dead inside the house and the appellant had an injury on the head and the appellant had said that Baijanti Bai had assaulted him due to which he had sustained injury. Although, this witness does not say a word about the extra judicial confession made by the appellant yet his testimony that on reaching the house of the appellant he saw that the appellant had an injury on the head which was attributed by the appellant to an assault made by Baijanti Bai and dead body of Baijanti Bai was seen lying inside the house is wholly unrebutted. Kamli Bai PW-4 is another witness who went with her husband Run Sai PW-1 to see the dead body of Baijanti Bai in the house of the appellant. She has testified that on visiting the house of the appellant she found that Baijanti Bai was lying dead with an injury on the head and the appellant was also sitting there.

8. So far as the testimony of Sunita PW-3 relating to extra judicial confession made by the appellant is concerned, it is wholly inadmissible in evidence since according to her the appellant had confessed his guilt upon asking of the police. The learned trial Judge has rightly discarded the testimony of Sunita PW-3 from consideration on this ground.

9. The testimony of Dr. Ashish Karan PW-6 and the autopsy report Ex.P.1 which has been dealt with in paragraph 3 (supra) establish beyond the shadow of any doubt that death of Baijanti Bai

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was homicidal in nature. This was also not disputed by the learned counsel for the appellant. His testimony also establishes that on 10-11-2003 he had examined the appellant and found one lacerated wound on the back portion of head measuring 1x1/2" x muscle deep duration of which was within 24 hours. This fact was also admitted by the appellant in his examination under Section 313 Cr.P.C.

10. It was urged by the learned counsel for the appellant that Sunita PW-3 had admitted that Banwari PW-11 was also present when the appellant confessed his guilt in presence of the police. Therefore, the testimony of Banwari PW-11 would tantamount to the confession made by the appellant in presence of the police. However, this argument cannot be accepted. Banwari PW-11 has nowhere stated that at the time of making extra judicial confession by the appellant, the police was present. His testimony clearly shows that immediately after learning about the death of Baijanti Bai he had visited the house of the appellant where the appellant had told him that since Baijanti Bai had assaulted him with a brick he had killed her by assaulting her with a brick. Thus, the extra judicial confession was made by the appellant even before the merg intimation was given to the police. There is absolutely nothing to show that Banwari PW-11 bears any grudge against the appellant or has any axe to grind against him. No question to impeach the credibility of this witness was asked in cross examination. There is nothing in his testimony to show that the extra judicial confession made by the appellant before him was not voluntarily or was made on account of any coercion, inducement or promise or favour. Thus, the learned trial Judge has rightly relied on the extra judicial confession made by the appellant for convicting him.

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11. Having thus considered the evidence led by the prosecution it its entirety, the following facts are proved beyond the shadow of doubt against the appellant:-

(A) Death of Baijanti Bai inside her house on 09-11-2003 was homicidal in nature due to hemorrhage as a result of rupture of the spleen and coma due to head injury.

(B) The presence of the appellant inside the house at the time of death of Baijanti Bai is established by the testimony of Kamli Bai PW-4, Supervisor PW-5 and Banwari PW-11.

(C) It is also established that the appellant had sustained an injury on his head for which no explanation whatsoever was given by the appellant.

(D) Lastly, the appellant made an extra judicial confession before Banwari PW-11 that he had caused the death of Baijanti Bai by assaulting her with a brick since she had also assaulted him with a brick.

12. It is thus proved beyond doubt that the appellant had caused the death of Baijanti Bai after she assaulted him with a brick on the head. The learned trial Judge has accepted the testimony of Banwari PW-11 relating to extra judicial confession made by the appellant as a whole and convicted the appellant under Section-304 Part-I of the IPC instead of Section-302 of the IPC. Conviction of the appellant under Section-304 Part-I of the IPC and the sentence awarded thereunder by the learned trial Judge is well founded and does not call for any interference.

13. In the result, the appeal fails and is dismissed.

Sd/-
Dilip Raosaheb Deshmukh
Judge